IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3111 OF 2004

Rajendra Hiralal Pandey
R/o.R.No.119, Sarvodaya
Hospital Staff Quarters,
Golibar Road, Ghatkopar(W)
Mumbai : 400 086. ...Petitioner

V/s.

Sarvodaya Hospital
Rifle Range, L.B. Shastri Marg,
Ghatkopar(W),
Mumbai: 400 086. ....Respondent

Mr.N.M. Ganguli for Petitioner.
Mr.H.H. Madon with Mr.Jayesh Vyas i/b Bilawala & Co. for Respondent.

CORAM : V.M. KANADE, J.
DATED : 21st MARCH, 2007.

ORAL JUDGMENT:-

1. Heard learned counsel appearing on behalf of the Petitioner and learned counsel appearing on behalf of Respondent.

2. The Petitioner is challenging the Judgment and Order passed

by the Industrial Court dated 31/08/2004 in complaint (ULP) No.578 of 1993.

3. Brief facts which are relevant for the purpose of deciding this petition are as under:-

. Case of the Petitioner is that he had joined services of Respondent sometime in 1975. Initially, he was appointed as a temporary employee. Later on he was made permanent and designated as Ward-boy. The case of the Petitioner is that in 1993 he was not given any work and his services were terminated. On 07/05/1993, the Manager of Respondent Hospital called the Petitioner in his office and asked him to vacate quarters immediately. At the relevant time one of the Trustees was also present. The Petitioner refused to vacate the premises and pointed out to the Manager that he was permanent employee and, therefore, question of vacating premises did not arise. It is case of the Petitioner that since he did not vacate the premises, he was not given any work and his services were terminated. He, therefore, filed complaint to the Industrial Court alleging unfair labour practice by

the Respondent under Item 5, 9, and 10 of Schedule IV of the MRTU and PULP Act 1971.

4. The Industrial Court dismissed the complaint filed by the Petitioner, holding that no case has been made out by the Petitioner herein that the Respondent had indulged in unfair labour practice as alleged by the Petitioner.

5. Learned counsel appearing on behalf of the Petitioner submitted that the Petitioner was working as Ward-boy and his services were terminated without following procedure prescribed by the law. He, therefore, submitted that there was clear breach of mandatory provisions of Section 25F of said Act. He further submitted that since the Petitioner was ill-literate, he signed on the vouchers which were given by the Manager. He submitted that these vouchers are in custody of the Manager and at no time, Manager had produced these vouchers in the court and therefore, adverse inference ought to have been drawn by the Industrial Court against the Respondent for not producing vouchers signed by the Petitioner. He submitted that so far as amount of Rs.4040

is concerned, he was paid the amount in advance since he was recuperating from ailment and Manager put his signature on various papers. He submitted that gratuity amount was also paid to the Petitioner and the Petitioner was not made aware what was being paid was gratuity amount.

6. Learned counsel for the petitioner has taken me through the Judgment and Order of Industrial Court and also evidence on record. In my view, submissions made by the learned counsel for the Petitioner can not be accepted. It is an admitted position that the Petitioner has received amount of gratuity and other benefits and he has not been signing mustor roll from 1988. The Industrial Court, therefore, in my view, had not erred in coming to the conclusion that the Petitioners had miserably failed to prove that the Respondents were indulged in unfair labour practice as alleged. There is no reason to interfere with the impugned order passed by the Industrial Court in complaint (ULP) No.578 of 1993.

. Writ Petition is, accordingly, dismissed. Rule is discharged.

V.M. KANADE, J.